



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
<http://www.epa.gov/region08>

AUG - 5 2005

Ref: 8ENF-L

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Don L. Gosney, President  
Gosney & Sons, Inc.  
P.O. Box 367  
Bayfield, CO 81122-0367

Re: Administrative Orders under the Clean Water Act  
33 U.S.C. § 309(a) and Notice of Violation under  
33 U.S.C. § 311(j) and the Oil Pollution  
Prevention Regulations for the Bayfield Pit and  
Grove Pit Facilities

Dear Mr. Gosney:

Enclosed are three documents from the United States Environmental Protection Agency Region 8 ("EPA") issued to Gosney & Sons, Inc. ("Gosney") that require your attention. Two Administrative Orders ("Order") have been issued to Gosney, one for each pit, at your Bayfield, Colorado facility. The Orders specify the nature of the violations under the Clean Water Act, 33 U.S.C. § 1251, *et seq.* (the "CWA") for the Bayfield Pit and Grove Pit at your facility. The authority for such action is provided to EPA under sections 308 and 309(a)(3) of the CWA, 33 U.S.C. §§ 308, 1319(a)(3). The Orders describes the actions necessary in order for Gosney to achieve compliance with the CWA.

The CWA requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any Orders issued thereunder. Section 309 of the CWA provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Section 508 allows for debarment from Federal contracts and/or loans for any noncompliance with the CWA or with an Order issued pursuant to the CWA (33 U.S.C. § 1368).

Also enclosed is a Notice of Violation ("NOV") Letter issued pursuant to the Oil Pollution Prevention Regulations, 40 C.F.R. Part 112. These regulations were promulgated under the Oil Pollution Act of 1990, amending the Clean Water Act, 33 U.S.C. § 1321(j), and require facilities such as yours to have Spill Prevention Control and Countermeasure (SPCC) plans. The NOV Letter describes the actions necessary to comply.



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Please review the Orders and NOV Letter carefully. Failure to comply with the requirements of the Orders shall constitute a violation of said Orders. Failure to comply with the NOV can lead to further enforcement by EPA as well. If you have any questions regarding this letter, the enclosed Orders, or the NOV Letter, or any other matters pertinent to compliance with the CWA, the most knowledgeable people on my staff regarding these matters are Lee Hanley for NPDES and Storm Water requirements at (303) 312-6555, Donna Inman for SPCC requirements at (303) 312-6201 and Elyana Sutin for legal issues at (303) 312-6899.

Sincerely,

*for Eddie A. Sierra*  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

cc: Tina Artemis, Regional Hearing Clerk  
Tribal Chairman, Southern Ute Tribe  
Connally Mears, 8TAP  
BIA

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2005 AUG -5 AM 10:35

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF:

Gosney & Sons, Inc.  
6699 County Road 521  
Bayfield, CO 81122

Respondent.

DOCKET NO. CWA-08-2005-0042

FINDINGS OF VIOLATION  
AND CONCLUSIONS OF LAW  
& ORDER FOR COMPLIANCE

INTRODUCTION

This administrative order for compliance is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by section 309(a) of the Clean Water Act ("the Act" or CWA), 33 U.S.C. § 1319(a), and its implementing regulations, as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Gosney & Sons, Inc. ("Respondent") is a corporation under the laws of the State of Colorado, with its principal place of business at 6699 County Road 521, Bayfield, Colorado, 81122.
2. Respondent is a "person" as that term is defined in section 502(5) of Act, 33 U.S.C. § 1362(5).
3. Respondent is the owner and/or operator of the Grove Pit sand and gravel operation in Bayfield, Colorado as defined in 40 C.F.R. § 122.2.
4. Section 402 of the Act establishes a National Pollutant Discharge Elimination System

(NPDES) program, administered by EPA, to permit discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.

5. The term “navigable waters” is defined as the waters of the United States, according to section 502(7) of the Act, 33 U.S.C. § 1362(7).

6. The term “waters of the United States” is defined to include various types of waters including, but not limited to, interstate waters, their tributaries, and wetlands adjacent to either interstate waters or their tributaries. 40 C.F.R. § 122.2.

7. The term “discharge” as well as the term “discharge of a pollutant,” are defined in section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2 to include any addition of any pollutant to navigable waters from any point source.

8. The term “pollutant” includes rock, sand, and industrial waste discharged into water, according to section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.

9. The term “storm water” means storm water runoff, snow melt runoff, and surface runoff and drainage. 40 C.F.R. § 122.26(b)(13).

10. Storm water contains “pollutants” as defined by the Act. 33 U.S.C. § 1362(6).

11. Section 301 of the Act prohibits the discharge of pollutants to waters of the US except under certain provisions including section 402 of the Act.

12. Under 40 C.F.R. § 122.21(a), any person who discharges must submit a complete application for an NPDES permit to the Director in accordance with this section.

13. Section 402(p) of the Act requires that a discharge of storm water associated with an industrial activity to navigable waters must comply with the requirements of an NPDES permit. 33 U.S.C. § 1342(p).

14. Under 40 C.F.R. § 122.26(c), any person who discharges storm water associated with industrial activity is required to apply for an individual permit or seek coverage under a promulgated storm water general permit.

15. Sand and gravel operations are point source activities covered under the mineral and mining category at 40 C.F.R. Part 436 Subpart C and therefore subject to the NPDES requirements including obtaining a permit prior to operations. 40 C.F.R. 122.21(g), 33 U.S.C. § 402.

16. The storm water permit requirements for sand and gravel operations are outlined in Sector J, Mineral Mining and Dressing, Multi-Sector General Permit (MSGP) for Industrial Activities. The requirements include, among other things, the development of a storm water pollution prevention plan (SWPPP) and the implementation of best management practices (BMPs). (65 FR 64746, October 30, 2000).

17. Respondent described its nature of business at the Grove Pit as sand and gravel mining in its permit application dated November 23, 2004.

18. On September 14, 2004, EPA representatives conducted an inspection of Respondent's facility located at County Road 521 and County Road 524, Bayfield, Colorado.

19. On the date of the inspection, the EPA inspectors observed a channeled flow at the south eastern boundary of the Grove Pit to Beaver Creek. No NPDES or storm water permits were available for review.

20. The channeled flow is described as:

Outfall 001: The discharge, noted as outfall 001 on Attachment A, serving the mining and gravel wash operations and site storm water runoff that flows into Beaver Creek at the south eastern boundary of Grove Pit.

21. On the date of the inspection, the EPA inspectors observed no or inadequate BMPs to control sediment, erosion runoff or industrial waste (petroleum products and portable toilet waste) within the facility's operation.

22. On January 11, 2005, EPA sent an information request to Respondent pursuant to section 308 of the Act, 33 U.S.C. § 1318. The purpose of the letter was to obtain information to determine if Respondent was in compliance with the Act. Respondent was required to respond within thirty (30) days of receipt.

23. Respondent's February 17, 2005 section 308 Response, Exhibit H (photograph of discharge) confirmed the discharge from Grove Pit to Beaver Creek.

24. Respondent's February 17, 2005 section 308 Response indicated that an NDPES and storm water permit had not been obtained for the Grove Pit.

25. Respondent's February 17, 2005 section 308 Response, Exhibit D, contained the NPDES and storm water permit applications for the Grove Pit.

26. Respondent's February 17, 2005 section 308 Response, Exhibit J, contained an incomplete Storm Water Pollution Prevention Plan (SWPPP) for the Grove Pit. The SWPPP was dated February 4, 2005 and is a requirement of the storm water permit application.

27. Respondent is therefore engaged in an “industrial activity” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(14).
28. Beaver Creek is a perennial stream that flows to the Los Pinos River. Beaver Creek flows north to south adjacent to the eastern border of Grove Pit.
29. Beaver Creek is a “navigable water” and a “water of the United States” as those terms are defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
30. The Los Pinos River is a “navigable water” and a “water of the United States” as those terms are defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
31. The NPDES permitting agency for Indian Country, which includes all areas within the exterior boundaries of the Southern Ute Reservation, is the Environmental Protection Agency (EPA). 40 C.F.R. 123.1(h).
32. The EPA has not issued an NPDES permit for the Respondent’s Grove Pit.
33. The Respondent is in violation of § 301 of the Act in that the Respondent discharged pollutants without an NPDES and storm water permit.
34. Respondent’s failure to apply for an NPDES and storm water permit for the Grove Pit from March 2003 to February 3, 2005 under 40 C.F.R. §122.21(a)(1) and 40 C.F.R. § 122.26(c), is a violation of section 308 of the Act, 33 U.S.C. § 1318.

#### COMPLIANCE ORDER

Pursuant to the authority of sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, Respondent is ordered to:

1. Within five (5) days of receipt of this Compliance Order (“Order”), give written notice to EPA of the Respondent’s intent to comply with the requirements of the Order.

2. Immediately revise the SWPPP to correct: 1) the physical location of the facility on p. 4 of the SWPPP; 2) the unsigned archaeological clearance determination; and, 3) include Appendix V, the Endangered Species Determination.
3. Implement all conditions in its SWPPP. In addition, the Respondent is required to increase storm water inspections to monthly and after each precipitation event of 0.5 inches or a cumulative precipitation of 0.5 inches over two or three consecutive days which ever is greater.
4. Identify any deficiencies observed during the storm water inspection, document and indicate the steps taken to prevent or minimize the reoccurrence of any deficient BMP, and address the deficiency within 48 hours.
5. Immediately develop a storm water inspection worksheet that contains the following information: name and signature of the person conducting the inspection, date of the inspection, the condition of the BMPs throughout the facility, what and where BMP repair(s)/replacement(s) were initiated, when and how the repair(s)/replacement(s) were conducted, if storm water discharge occurred, and the location(s) of the storm water discharge. This worksheet shall be used for all storm water inspections as required by the SWPPP and paragraph 4 above.
6. Immediately conduct daily monitoring of precipitation using a rain gauge. The precipitation shall be recorded and maintained with the storm water inspection records.
7. Immediately conduct sampling at Outfall 001 as described in Paragraph 20 in the Findings of Fact. The discharge shall be sampled directly above where the flow enters Beaver Creek. A marker shall be installed to indicate the sampling location.
8. At Outfall 001, conduct sampling, analyze the sample(s) using approved EPA methods, 40 C.F.R. Part 136, and meet the following interim discharge limits:



Parameter	Sampling Frequency	Sample Type	Effluent Limit (Instantaneous)
Flow (MGD) a/	Weekly	Instantaneous	Report
Total Suspended Solids (mg/l)	Weekly	Grab	45 (daily max) 25 (monthly average)
pH (standard units)	Weekly	Instantaneous	No less than 6.5 nor greater than 9.0
Oil and Grease (visual) b/	Weekly	Visual	b/
Total Dissolved Solids (mg/l)	Weekly	Grab	Report c/
Alkalinity	Quarterly	Grab	Report
Chemical Oxygen Demand (COD)	Quarterly	Grab	Report
Nitrate-Nitrite (mg/l)	Monthly d/	Grab	0.68

a/ MGD means million gallons per day. Flow measurements of effluent volume shall be made in such a manner that the facility can affirmatively demonstrate that representative values are being obtained.

b/ If a visible sheen is detected, a grab sample shall be taken and analyzed immediately. The concentration of oil and grease shall not exceed 10 mg/l in any sample.

c/ The sum of Total Dissolved Solids shall not exceed one (1) ton per day.

d/ If after three months of sampling, all results are below the detection limit, sampling for this parameter can be reduced to semi-annual.

9. Immediately develop and maintain a monitoring log containing the following information for each area monitored as stated in the preceding paragraph: the date and time of the visual observation and/or sampling, the name and initials (indicating a signature) of the person making the observation, and the location of the visual observation and/or sampling.

10. The monthly sampling is to be conducted in the first week of the month.

11. Submit to EPA monthly reports, including but not limited to all inspections reports and monitoring logs, and laboratory and field sampling results. The monthly report shall also include notification of any instances of non-compliance with the interim discharge limits and measures taken or to be taken to correct those instances of non-compliance. The monthly report shall be

postmarked by the 30<sup>th</sup> day of every month following the sampling month, until EPA notifies the Respondent, in writing, that this Order has been closed.

12. Respondent shall maintain the monitoring records at least three (3) years after the date of this Order and make them available for inspection or copying upon request by an authorized representative of EPA. The Respondent must know the location of the records.

#### CONTACTS FOR SUBMISSIONS

Submissions required by this Compliance Order shall be sent to:

U.S. Environmental Protection Agency  
Region 8 (8ENF-W-NP)  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2408  
Attn: Lee Hanley

#### RESERVATION OF RIGHTS

Nothing in this Order shall be construed to relieve Respondent of the requirement to obtain and comply with any NPDES permit or other applicable requirements of other federal, state, or local law. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order, and for any other legal requirement.

Violation of this Order including failure to submit the required information, may be subject to penalties under section 309(g) of the Act, or a civil action for appropriate relief under 309(b) and (d) of the Act in the district court of the United States, including a permanent or temporary injunction and penalties. Making a false statement under 18 U.S.C. §1001, may be punishable by the imposition of a fine and/or imprisonment.

The effective date of this Order shall be the date of receipt by Respondent.

UNITED STATES ENVIRONMENTAL

PROTECTION AGENCY, REGION 8

Date: 08/05/2005

for Eddie A. Sierra  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

